

1 LARS T. FULLER (No. 141270)  
2 SAM TAHERIAN (No. 170953)  
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4 THE FULLER LAW FIRM, PC  
5 60 No. Keeble Ave.  
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6 Attorneys for Debtor

7  
8 **UNITED STATES BANKRUPTCY COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN JOSE DIVISION**

11 In re CASE NO.: 20-50182-MEH

12 PIERCE CONTRACTORS, INC.

13 Debtor

14 **SUPPLEMENTAL DECLARATION OF**  
**LARS T. FULLER IN SUPPORT OF**  
**APPLICATION FOR ORDER**  
**AUTHORIZING EMPLOYMENT OF THE**  
**FULLER LAW FIRM, P.C. AS**  
**ATTORNEYS FOR DEBTOR**

15  
16 **CHAPTER 11**

17  
18 Date: None Set  
19 Time: None Set  
20 Ctrm.: 11

21  
22 I, Lars T. Fuller, declare and say:

23 1. I am an attorney at law licensed to practice in the State of California and this Court.  
24 2. On June 17, 2021, The Fuller Law Firm, P.C. substituted into this case.  
25 3. On June 25, 2021 I caused to be filed The Fuller Law Firm, P.C.'s Application for  
26 Employment.  
27

1       4. Yesterday I received a call from Mr. Fehr of the Office of the United States Trustee  
2 requesting additional information as to the retainer received.

3       5. Debtor was admonished that the retainer could not come from estate funds.

4       6. The attorney-client agreement specifically provides that the retainer may not come  
5 from estate funds.

6       7. Mr. Fehr requested that the Attorney-Client fee agreement be produced. Usually I  
7 am hesitant to produce the agreement. However, in this case I will. A true and correct copy of the  
8 Fee Agreement is attached hereto as Exhibit 1.

9       8. The retainer was in fact paid from Bradley L. Pierce, Richard's Pierce's son. On  
10 information and belief, it is a gift. A true and correct copy of the cashier's check is attached hereto  
11 as Exhibit 2.

12       9. The retainer was deposited in trust. No withdrawals have been made nor will any  
13 be made unless this case is dismissed or after obtaining an order from the Court.

14       Allowance of Post-petition Retainers

15       10. Courts are split on the allowance of post-petition retainers.

16       In In re Troung, 259 B.R. 264 (Bankr. N.J. 2001) chapter 11 debtors filed an application to  
17 pay a post-petition retainer to their counsel. The U.S. Trustee filed a limited objection, arguing  
18 that before the retainer is disbursed, the court must find that the factors in In re Knudsen Corp., 84  
19 B.R. 668 (9th Cir. BAP 1988) have been satisfied.

20       The Truong opinion recites the Knudson factors, which are as follows:

21       1. The case is an unusually large one in which an exceptionally large amount of fees  
22 accrue each month;

23       2. The court is convinced that waiting an extended period for payment would place an  
24 undue hardship on counsel;

1           3. The court is satisfied that counsel can respond to any subsequent court disallowance  
2           of the fees already paid; and  
3           4. The fee retainer procedure is, itself, the subject of a noticed hearing prior to any  
4           payment thereunder.

5           While the Troung, opinion stressed that the Knudson factors have been widely followed,  
6           citing In re Bennett Funding Group, Inc., 213 B.R. 227, 232-233 (Bankr.N.D.N.Y.1997); In re W  
7           & W Protection Agency, Inc., 200 B.R. 615, 620-621 (Bankr.S.D.Ohio 1996); In re Dandy Lion  
8           Inns of Am., 120 B.R. 1015, 1017-1018 (D.Neb.1990), the opinion went on to state that ." the  
9           Knudson factors are better suited for large cases, but "the test is too restrictive for the broad range  
10          of retention terms permitted by Code § 328, which is restricted only by the reasonableness of the  
11          retention terms proposed by the applicant. Regardless of the size of the case, the bottom line  
12          consideration should be whether the terms of retention are fair; both to the professional whose  
13          retention is sought, as well as to the debtor and its creditors who must bear the expense.' Troung at  
14          267.

15          The Troung opinion preferred the analysis set forth in Jefferson for post-petition retainer in  
16          a smaller chapter 11. The Jefferson opinion acknowledged the Knudsen factors, but also  
17          considered:

18           1. the retainer's economic impact on the debtor's ongoing business operation;  
19           2. the retainer's economic impact on the debtor's ability to reorganize;  
20           3. the amount and reasonableness of the retainer;  
21           4. the reputation of debtor's counsel; and  
22           5. the ability of debtor's counsel to disgorge such payments at the conclusion of the  
23           case should the Court determine that the fees paid to counsel are not justified.

24          Troung at 268, citing Jefferson.

1  
2 11. Debtor contends that the Jefferson factors should control this small case.  
3  
4 12. Regardless, here the retainer is not even coming from the estate. Rather it is a gift  
from Richard Pierce's son emanating from a wrongful death recovery arising from a plane crash  
5 with the tragic loss of Richard's wife and Bradley's mother.  
6

7 I declare under penalty of perjury under the laws of the United States of America that the  
8 foregoing is true and correct.

9 Executed in Santa Clara County, California

10 DATED: June 29, 2021

THE FULLER LAW FIRM, PC

11  
12 By: /s/ Lars T. Fuller  
13 LARS T. FULLER  
14 Attorney for Debtor  
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# EXHIBIT 1

## *The Fuller Law Firm*

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### **LEGAL SERVICES AGREEMENT**

1. IDENTIFICATION OF PARTIES. This agreement is made by and between The Fuller Law Firm, P.C. hereinafter referred to as "Attorney" and Pierce Contractor's, Inc., hereinafter referred to as "Client".

2. LEGAL SERVICES TO BE PROVIDED. Attorney shall represent debtor as debtor in possession in a Chapter 11 now case now pending in the Northern District of California, San Jose Division as Case No. 20-50182. In Attorney's judgment, the case may be re-designated as a Subchapter V case. Legal Services specifically exclude any appellate work or representation in a subsequent or converted case.

3. RESPONSIBILITY OF ATTORNEY AND CLIENT. Attorney shall keep Client reasonably informed of significant developments relating to the representation and timely comply with reasonable requests for information. Client shall be truthful and cooperative with Attorney and keep Attorney reasonably informed of Client's address, telephone number and whereabouts.

4. ATTORNEY'S FEES. The amount Attorney will receive for Attorney's fees for the legal services to be provided under this Agreement will be based on the time expended by Attorney. Attorney bills in 0.1 hour increments. The following rates shall apply:

Lars T. Fuller	\$505 / hour
Sam Taherian	\$485 / hour
Joyce Lau	\$405 / hour

Client shall deposit, from non-estate funds, an initial retainer of \$25,000 before commencement of representation. Regardless of the source of the retainer, Attorney's duties are solely to estate and Attorney will not accept direction from the payer as how to prosecute the case.

5. COSTS. Costs include, but are not limited to court filing fees, deposition costs, expert fees and expenses, investigation costs, messenger service fees, process server charges, recorded document retrieval costs.

6. SETTLEMENT. Attorney will notify Client promptly of the terms of any written settlement offer received by Attorney.

7. DISCHARGE OF ATTORNEY. Client may discharge Attorney at any time by written notice effective when received by Attorney. Unless specifically agreed by Attorney and Client, Attorney will provide no further services and advance no further costs on Client's behalf after receipt of the notice. Notwithstanding the discharge, Client will be obligated to pay Attorney for Attorney's fees earned through the date of discharge, subject to any order of the Court. Attorney may withdraw at any time so long as the withdrawal is permitted under the Rules of Professional Conduct.

8. RELEASE OF CLIENT'S PAPERS. At the conclusion of services under this agreement, Attorney will release promptly to Client on request all of Client's papers and property. Attorney is hereby authorized to destroy Client's file two years after termination of services.

9. DISCLAIMER OF GUARANTY. Although Attorney may offer an opinion about possible results regarding the subject matter of this agreement, Attorney cannot guarantee any particular outcome. Client acknowledges that Attorney has made no promise about the outcome and that any opinion offered by Attorney in the future will not constitute a guarantee.

10. ENTIRE AGREEMENT. This agreement constitutes the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this agreement will be binding on the parties. Any subsequent modifications must be in writing signed by the parties.

11. SEVERABILITY. If any provision of this agreement is held to be unenforceable, the remainder of that provision and the entire agreement will be severable and remain in effect.

I have read and understood the foregoing terms and agree to them as of the date Attorney first provided services.

Dated: June 11, 2021

THE FULLER LAW FIRM, P.C.

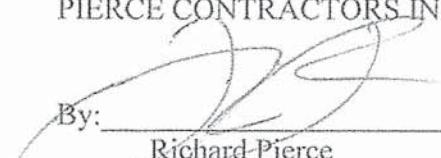
By:



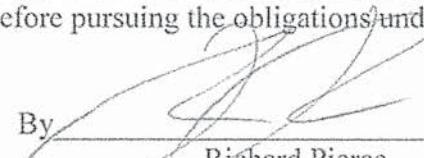
Lars T. Fuller  
Attorney At Law

Dated: June 11, 2021

PIERCE CONTRACTORS INC.

  
By: \_\_\_\_\_  
Richard Pierce  
CEO  
CLIENT

I Richard Pierce hereby guaranty the obligations of Pierce Contractors, Inc. I understand that is a continuing guarantee such that remedies against Pierce Contractors, Inc. need not be exhausted before pursuing the obligations under this guaranty.

  
By \_\_\_\_\_  
Richard Pierce  
Guarantor

# EXHIBIT 2

